

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

ANTONIO RODRIGUEZ,

Defendant.

CASE NO. 8:01CR3123

ORDER

This matter is before the Court on the Defendant's motion to set a briefing schedule and continue the resentencing hearing (Filing No. 231). The Defendant asks to continue the hearing, now scheduled for January 23, 2006, by 21 days to accommodate briefing and the submission of evidence by both parties.¹

The issues to be addressed at resentencing according to the July 11, 2005, Eighth Circuit decision are: 1) the manner and extent of the downward departure; and 2) review of enhancements under an advisory guideline scheme. *United States v. Rodriguez*, 414 F.3d 837, 849 (8th Cir. 2005). The Court notes a recent Eighth Circuit decision stating that, under *Apprendi v. New Jersey*, 530 U.S. 466 (2000), *United States v. Booker*, 125 S. Ct. 738 (2005), and *United States v. Pirani*, 406 F.3d 543, 551 n.4 (8th Cir. 2005), the district court may decide sentencing enhancements by a preponderance of the evidence. *United States v. Artis*, 2006 WL 73463 (8th Cir. Jan. 13, 2006).

Given the Eighth Circuit's guidance in the *Rodriguez* opinion and the recognized applicability of the preponderance of the evidence standard, the Court does not require lengthy briefing by either party. However, the Court will continue the resentencing, and will

¹The Court granted leave for the Defendant to file his brief under seal. (Filing No. 230.)

allow each party to submit concise briefs as follows: the Defendant's brief is due no later than January 25, 2006, and the government's brief is due no later than February 3, 2006. No further briefing will be allowed. Each party shall clearly and concisely address the two relevant issues, considering the Eighth Circuit's opinion. Absent dire circumstances, no further continuances will be allowed with respect to the briefing schedule or the resentencing hearing. The Court will not order the Marshal to keep the Defendant at the requested jail; rather, counsel may make an informal request to the U.S. Marshal.

IT IS ORDERED:

1. The Defendant's motion to extend the briefing deadline and resentencing hearing (Filing No. 231) is granted, and the resentencing hearing is continued until further order of the Court for the reasons expressed above;
2. The Defendant, Antonio Rodriguez, shall file a concise brief on any issues relevant to the his resentencing on or before January 25, 2006;
3. The United States shall file its concise responsive brief and address any issues relevant to the Defendant's resentencing on or before February 3, 2006;
4. The request of defense counsel to order the U.S. Marshal to keep the Defendant in a particular jail will be denied; and
5. The Clerk shall send a copy of this Memorandum and Order to the U.S. Marshal.

DATED this 17th day of January, 2006.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge